

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Anthony Carpenito

v.

Civil No. 09-cv-021-SM

William Wrenn, Commissioner,  
New Hampshire Department of  
Corrections

**REPORT AND RECOMMENDATION**

Before the Court is Anthony Carpenito's petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, alleging that he is presently serving a sentence that has expired. The matter initially came before me for preliminary review to determine whether or not the claim raised in the petition is facially valid and may proceed. See Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("§ 2254 Rules"); see also United States District Court District of New Hampshire Local Rule ("LR") 4.3(d)(2) (authorizing magistrate judge to preliminarily review pro se prisoner filings pursuant to 28 U.S.C. § 1915A).

On February 27, 2009, I issued an Order directing Carpenito to amend his petition to demonstrate that the claim therein had

been fully exhausted in the state courts. Carpenito has not filed anything with the Court in response to my Order. Carpenito has not, therefore, demonstrated that the claim in his petition has been exhausted. Accordingly, I recommend that this matter be dismissed without prejudice to the refiling of a timely petition upon completion of exhaustion in the state courts.

Any objections to this report and recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).

  
James R. Muirhead  
United States Magistrate Judge

Date: April 29, 2009  
cc: Anthony Carpenito, pro se